IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.812 OF 2006
IN
NOTICE OF MOTION NO.1325 OF 2006
IN
L.C.SUIT NO.1295 OF 2006
WITH
CIVIL APPLICATION NO.1115 OF 2006

Ganpat Ranba Managutkar & Ors. ...Appellants

Versus

Municipal Corporation of Gr.Mumbai ...Respondent

.....

Mr.Diwakar Dwiwedi for Appellants.

Mrs.Geeta Joglekar for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

JANUARY 24, 2007.

P.C.

1. Heard Counsel for the parties.

2. Counsel for the Appellants submits that the Appellants at this stage are pressing only prayer clause (b) of the Notice of Motion, which reads thus:

> "(b) Pending the hearing and final disposal of the suit, by an order and injunction restraining the Municipal Corporation from taking further action against the Plaintiffs in respect of their occupation and possession of the space occupied by them without roof with the articles, materials, etc.

3. It is not in dispute that the suit structure has already been demolished. The Appellants, however, apprehend that the Corporation may forcibly dispossess the Appellants from the land on which the suit structure was standing, now demolished by the Corporation.

4. There are two reasons for which the apprehension will have to be negatived. Firstly, because the Corporation was concerned only with the process of removing the unauthorised structure. In other words, the Corporation has no concern with the fact whether the Appellants are in fact or in law in possession of the plot under the said structure. Counsel for the Corporation fairly states that the Corporation has no obligation to remove the debris lying on the plot underneath the

structure after the demolition was completed.

5. Secondly, the Appellants have not arraigned the owner of the plot as party to this proceeding, for which reason, the relief cannot be considered in absence of the real owner of the property. For this reason, the Appeal should fail. Ordered accordingly.

A.M.KHANWILKAR, J.